IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 27865 of 1998

Between:

The Director,
Central Tobacco Research Institute, Rajahmundry.

..... PETITIONER

AND

1. The Industrial Tribunal-cum-Labour Court,
   Visakhapatnam.
2. S.Jaganmohan Rao, S/o Nageswara Rao
   Near 16th Tap. Rajahmundry,
   E.G. District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of *Writ of Certiorari* calling for the records pertaining to impugned Award made in I.T.I.D.No.5 of 1996(C) dated 17-04-1998 on the file of the 1st Respondent herein and quash the same as illegal, arbitrary and without jurisdiction and grant no relief to the 2nd Respondent.

Counsel for the Petitioner: MR.CH.DHANAMJAYA

Counsel for the Respondent No.1: G.P. for Labour

Counsel for the Respondent No.2: MR.CHALLARI

NAGESWARA RAO

The Court made the following:

ORDER:

This writ petition is filed by the Management of the Central Tobacco Research Institute, Rajahmundry represented by its Director being aggrieved by the order passed in I.T.I.D. No.5 of 1996 (C), dated 17.04.1998, wherein the Tribunal directed the petitioner-management to reinstate the workman who is the second respondent herein with full back wages and also with continuity of service along with costs.

2. It is the case of the petitioner-management that it is a Unit of Indian Council of Agricultural Research (ICAR), New Delhi, a society registered under the Societies Registration Act, 1860 wholly financed by the Government of India, Ministry of Agriculture. The ICAR is established for promotion of research and Education in all fields of relevance to agriculture progress in the country. The Central Tobacco Research Institute, Rajahmundry is established for promotion of Research and Development in the field of Tobacco. The institute is not a profit motive institute. It is purely research organization and there are no industrial activities. The casual labours are engaged for agricultural and allied operations in the research institute keeping in view the seasonal and casual type of work on need basis. The second respondent was engaged as casual labour during the year 1984-90. During this period, he was never engaged for more than 240 days in any year. The second respondent left on his own accord since he was not reporting and his services were not utilized as casual labour. There is no termination of his services since he was only a casual employee, employed on daily wages. Therefore, the termination of the second respondent also does not arise. Even otherwise, the Industrial Dispute raised by the second respondent is at a belated stage i.e. after six years of his purported termination from service. Therefore, the Tribunal was not right in holding that the second respondent-workman, worked for more than 240 days and he is entitled for reinstatement with full back wages and other benefits. The award of the Tribunal is arbitrary and illegal and liable to be dismissed.

3 . I have given my earnest consideration to the submissions made by the learned counsel. Perused the award passed by the Tribunal and other material available on record.

4. At the out set, I am of the view that the Tribunal has not committed any error apparent on the face of the record calling for the interference of this Court under Article 226 of Constitution of India. The workman has been continuously working from 1984 to 1990. The basic fact as to the employment of the petitioner during the year, 1984 to 1990 was not in dispute. The only fact disputed by the management was that the workman never worked for more than 240 days among all these six years. But, it is unfortunate that having been said so, the management had not adduced any oral or documentary evidence in this regard. If really, the petitioner did not work for more than 240 days during all these years or during the calendar year preceding the date of termination, nothing has prevented the management from producing the evidence for all these six years and marking them as documentary evidence. Such a course of action has not been adopted by the management. In these circumstances, the Tribunal has rightly come to a conclusion that the workman had worked for more than 240 days during the preceding 12 months of his termination from service. Therefore, the provisions of Section 25 (F) of Industrial Disputes Act, are violated. In the absence of any oral or documentary evidence, there was no other option for the Tribunal except to come to a conclusion that the termination of service of the workman was illegal and contrary to the provisions of Section 25 (F) of Industrial Disputes Act and directed the management to reinstate the workman with continuity of service. However, while awarding full back wages, the Tribunal has not taken into consideration of the fact that the petitioner was out of employment during the course of the lis. Admittedly, even according to the workman, his services were terminated on 12.01.1990 and the Industrial Dispute was raised in 1996. I am of the opinion that the petitioner is not entitled for any wages for the period from 12.01.1990 till the award passed by the Tribunal on 17.04.1998.

5. In the result, the writ petition is partly allowed and the award passed by the Tribunal is modified to the following effect that “the management is directed to reinstate the workman without any back wages. It is made clear that the reinstatement shall be with continuity of service. It is further made clear that in view of the stay obtained by the Management, the wages as required under section 17 (B) of the I.D. Act have not been paid and therefore, the petitioner is entitled for full wages from the date of the award till the date of his reinstatement.

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(C.V. RAMULU, J)

Date: 06.07.2005

Ksn

This Rule Nisi has been made absolute as above.

Witness the Hon’ble Sri Bilal Nazki , the Acting Chief Justice on this the 6th day of July, Two thousand and five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Presiding Officer,

Industrial Tribunal-cum-Labour Court,
Visakhapatnam.

2. 2 CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT).

3. 2 CD copies

4. 1 CC to MR.DHANAMJAYA

*Form-NIC-OGS/WP{**KRD**}*